## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

SHERRI L. DAVIS, et al.,	)	
Plaintiffs,	)	CASE NUMBER: 2:06-cv-187-WKW-SRW
vs.	į́)	
TMA FOREST PRODUCTS GROUP, et al.	)	
Defendants.	)	
	)	
	)	

## **DEFENDANT PACTIV CORPORATION'S** RESPONSE TO PLAINTIFFS' MOTION TO ALLOW AMENDED COMPLAINT AND MOTION TO STRIKE

Defendant Pactiv Corporation ("Pactiv") submits this response to Plaintiff's Motion to Allow Amended Complaint and moves to strike paragraph 109 of the proposed Amended Complaint as it relates to Pactiv. In support thereof, Pactiv states as follows:

- 1. On April 24, 2006, Plaintiffs filed a Motion to Allow Amended Complaint seeking to delete Count 9 (spoliation) as a cause of action. Pactiv does not oppose Plaintiffs' motion to the extent that it seeks to delete the spoliation count, as it does not present a recognized cause of action under Alabama law.
- 2. Plaintiffs, however, continue to allege that "Plaintiffs are entitled to the benefit of the substantive law of the State of Alabama, including an inference of Defendants' guilt, culpability or awareness of their liability because of spoliation of evidence." Am. Compl. at ¶ 109 (Emphasis added).
  - 3. Plaintiffs have alleged no basis for claims of spoliation against Pactiv.

4. Plaintiffs merely allege (at ¶¶ 107-08) that Louisiana-Pacific Corporation—not Pactiv—destroyed or disposed of material evidence and documents. *See also* Pls.' Resp. to Defs.' Mot. to Dismiss (attaching Affs. of Carlton Dukes and Connie Wayne Adams, which allege that Louisiana-Pacific, not Pactiv, may have destroyed relevant evidence).

WHEREFORE, Pactiv Corporation requests that the Court enter an order striking paragraph 109 of the proposed Amended Complaint insofar as it alleges spoliation of the evidence as against Pactiv.

# Respectfully Submitted,

# s/ E. Bryan Nichols

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### **CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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